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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

LAWRENCE JOSEPH PETITTA,

Defendant and Appellant.

H046826

(Santa Clara County

Super. Ct. No. B1154589)

In July 2013, Lawrence Joseph Petitta was convicted of robbery (Pen. Code, §§ 211, 212.5, subd. (c))<sup>1</sup> with two prior serious felony convictions (§ 667, subd. (a)). Petitta was sentenced to serve 13 years in prison. Petitta appealed and this court affirmed the judgment in 2014. (*People v. Petitta* (Aug. 14, 2014, H040178) [nonpub. opn.]).

On February 14, 2019, Petitta, representing himself in propria persona, filed a petition for writ of habeas corpus in the superior court, arguing that he had a right to be resentenced pursuant to Senate Bill No. 1393 (2017-2018 Reg. Sess.) (Stats. 2018, ch. 1012, §§ 1, 2, effective January 1, 2019), which grants the trial court discretion to dismiss a prior serious felony conviction. The trial court denied the petition in June 2019, finding that the statute does not apply retroactively to Petitta's final judgment. (*People v. Garcia* (2018) 28 Cal.App.5th 961, 973.)

Petitta filed a notice of appeal on April 16, 2019 challenging his sentence under Senate Bill No. 1393, and the trial court issued a certificate of probable cause. The notice

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<sup>1</sup> All further statutory references are to the Penal Code.

included Petitta's declaration in support of a "motion for restitution hearing for reconsideration of ability to pay and constitutionality of excessive fines. Cal. Penal Code 1202.4; 8th and 14th Amend. U.S. Const."

We appointed counsel to represent Petitta on appeal in this court. Appointed counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), but correctly noted the limitation to *Wende* review set forth in *People v. Serrano* (2012) 211 Cal.App.4th 496 (*Serrano*). Counsel summarized the case but raised no specific issues in the opening brief.

*Wende* review is only available in a first appeal of right. (*Serrano, supra*, 211 Cal.App.4th at p. 511.) Because Petitta's appeal is from an order after judgment seeking to modify his sentence, and not a first appeal of right, he is not entitled to *Wende* review. (*Ibid.*) We therefore proceeded with this appeal under the standard we set forth in *Serrano*.

Pursuant to *Serrano*, on January 31, 2020, we notified Petitta of his right to submit written argument on his own behalf within 30 days. Petitta filed a supplemental brief arguing that the trial court erred when it denied his request for resentencing. Specifically, Petitta now asserts that the trial court erred when it determined that his case is final, because he has an appeal pending in the Ninth Circuit Court of Appeals.

Petitta is incorrect. "[F]or the purpose of determining retroactive application of an amendment to a criminal statute, a judgment is not final until the time for petitioning for a writ of certiorari in the United States Supreme Court has passed. [Citations.]" [Citation.]" (*People v. Vieira* (2005) 35 Cal.4th 264, 306.) Here, the California Supreme Court denied Petitta's petition for review in March 2017. The time passed for Petitta to file a writ of certiorari in the United States Supreme Court in June 2017. (Supreme Court of the United States Court Rules, Rules 13.) Petitta's judgment is final, and he is not eligible for resentencing under Senate Bill No. 1393.

As nothing in Petitta's supplemental brief raises an arguable issue on appeal, we must dismiss it. (*Serrano, supra*, 211 Cal.App.4th at pp. 503-504.)

**DISPOSITION**

The appeal is dismissed.

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Greenwood, P.J.

WE CONCUR:

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Elia, J.

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Grover, J.

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